No. 218.

IN THE

DEC 21 1899
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

Brief of Waters for P. E.

Filed Dec. 21, 1899.

George H. Earle, Jr., Receiver of the Chestnut Street National Bank, of Phiiadelphia, Pennsylvania, Plaintiff in Error,

vs.

The Commonwealth of Pennsylvania, at the Suggestion and to the Use of The Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, Defendant in Error.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

BRIEF OF PLAINTIFF IN ERROR.

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ASA W. WATERS,
W. H. ADDICKS,
Attorneys for Plaintiff in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1899. No. 218.

GEORGE H. EARLE, JR., RECEIVER OF THE CHESTNUT STREET NATIONAL BANK, OF PHILADELPHIA, PENNA., PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA, AT THE SUGGESTION AND TO THE USE OF THE COMMONWEALTH TITLE INSURANCE AND TRUST COMPANY, TRUSTEE FOR MARY RODGERS UNDER THE WILL OF BENJAMIN MILNES, DECEASED, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

BRIEF OF PLAINTIFF IN ERROR.

I. A STATEMENT OF THE CASE.

The Chestnut Street National Bank of Philadelphia, Pa. failed on December 23d, 1897, and the Comptroller of the Currency of the United States, satisfied of its insolvency, appointed George H. Earle, Jr., Receiver on January 29th, 1898, who immediately qualified and took possession of all its assets and ever since has been in possession thereof, and is administering the duties of his trust, under direction of said Comptroller. Section 5234, United States Revised Statutes. (Transcript, page 65.) The Receiver found attachment proceedings pending against the bank in the Court of Common Pleas, No. 4, of Philadelphia County (No. 604, June Term, 1897), a court of the State of Pennsylvania.

The Commonwealth of Pennsylvania at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers, under the will of Benjamin Milnes, deceased, defendant in error in this court, is plaintiff in said State court, and sued one James Long, in an action in *assumpsit* on an executor's bond upon which he was surety, summons issuing on July 24th, 1897. (Transcript, page 13.) On September 29th, 1897, judgment was entered against James Long for $31,499. (Transcript, page 20.) At once the plaintiff in the State court (defendant in error) issued writs of *fieri facias* and attachment *sur* judgment (or attachment execution), the latter a remedial process provided for by the statutory laws of Pennsylvania, summoning by name as garnishees the Union Trust Company, the Merchants' National Bank, the Girard National Bank, the Eighth National Bank, the Fourth Street National Bank, the Huntingdon and Broad Top Mountain Railroad and Coal Company, the Niagara Mining and Smelting Company, and James Long, Brother & Co. (Transcript, pages 21 to 24, inclusive), and an alias writ of attachment *sur* judgment on October 5th, 1897, summoning by name as garnishee M. Simpson McCullough

"and all other persons in whose hands or possession
"the said goods and chattels, stocks, moneys, interest,

"and debts or any of them may be attached as gar-
"nishees, that they be and appear before our said court
"at Philadelphia, on the first Monday of November
"next, to show, if anything they, the said defend-
"ant, or the said garnishees have to say, why the
"said garnishee, besides costs of suits, should not be
"levied of the effects of the said defendant in the
"hands of said garnishees and have you then and there
"this writ.

"Witness the Honorable Michael Arnold, president
"judge of our said court at Philadelphia, the fifth day
"of October, A. D. 1897.

"J. U. G. HUNTER,
"Pro Proth'y."

(Transcript, pages 27, 28.)

Both writs of attachment *sur* judgment were served by the Sheriff of Philadelphia County in the State of Pennsylvania upon all parties named, and return made to said State court "Attached as within commanded and made "known to garnishee," &c., and the last-named alias writ, although not naming the Chestnut Street National Bank, was served upon it and the following return made to said Court of Common Pleas by the Sheriff, to wit:—

"Attached as within commanded and made known
"to garnishees as follows, viz., M. Simpson McCul-
"lough, by giving to him Oct. 6, 1897, at 9 o'clock
"A. M. a true and attested copy of the within writ
"and making known to him the contents thereof and
"Chestnut Street National Bank, by giving Oct. 28,
"1897, at 11 o'clock and 35 minutes A. M. a like
"copy to William Steele, Cashier of said Bank and
"making known to him the contents thereof and *nihil*
"habet as to James Long, deft.

"So answers

"JOHN J. CURLEY,
"Deputy Sheriff.

"ALEXANDER CROW, JR.,
"Sheriff."

(Transcript, page 28.)

Interrogatories were filed propounded by said plaintiff in said State court (defendant in error) to each of the foregoing garnishees so summoned in said action, as provided for by the statutory laws of Pennsylvania in attachment proceedings, and all entered appearance as defendants (garnishees) to such attachment proceedings, including said The Chestnut Street National Bank, and all answered practically to such interrogatories and attachment proceedings *nulla bona,* except the Chestnut Street National Bank. (Transcript, pages 29 to 45.)

On November 6th, 1897, pursuant to the practice and law of said State of Pennsylvania, interrogatories were filed in such attachment proceedings and served upon said Chestnut Street National Bank, together with a rule in words as follows, viz.:—

> "*To the garnishee above named (meaning the Chestnut Street National Bank), or attorney:*
>
> "Please take notice that interrogatories of which "the foregoing is a copy, have been filed in the above "stated case, and that a rule has been entered upon "the garnishee in the said case to answer the same "within twenty days, or judgment *sec. reg.*
>
> "Yours respectfully,
>
> "A. D. WILER.
>
> "CRAWFORD, LOUGHLIN & DALLAS,
>
> "*Attorneys for Plaintiff.*"

(Transcript, pages 45, 46.)

On November 24th, 1897, the answers of the Chestnut Street National Bank to the interrogatories were filed, and without here quoting in full we give a brief statement thereof.

(Transcript, pages 47 to 50.)

1. On October 28th, 1897, Long owed the bank $17,831 and interest from April 22d, 1897, and the bank "held "as collateral security for the indebtedness" seventy-seven shares National Gas Trust stock of then value of $160 per share, and thirty-three shares Eighth National Bank stock

of then value of $264 per share. Long had been a debtor to the bank for many years, and it will, we think, be judicially noticed by the court, that the expression "held "as collateral security for indebtedness," as used in this answer, in reference to these shares, means (as is the truth), that the shares of stock stood upon the books of the Eighth National Bank and of the National Gas Trust in the name of James Long, but when pledged to the Chestnut Street National Bank by him as collateral to his loan, were accompanied by assignments in blank and a blank power of attorney duly executed by said Long, so that a transfer on the books of either company of the respective shares so held as collateral could at any time have been made from Long to itself, or its assigns, by said Chestnut Street National Bank.

2. Prior to the service of the writ of attachment upon the Chestnut Street National Bank on October 28th, 1897, to wit, on September 20th, 1897, the said bank issued a Clearing House due bill, No. 20,968 (Transcript, page 48), payable to bearer, and as stated on its face, "payable "only in the exchanges through the Clearing House the "day after issue" at the request of Long for the balance to his credit, $2900, and the same was handed to him, and his account with the bank balanced and closed. Long, instead of the next day collecting the amount in cash "through the Clearing House" held the bill until November 3d, 1897, when he presented it to the cashier of the bank in person, and requested that the interest on his indebtedness to the bank be paid out of it, and a new Clearing House due bill given to him for the difference, which was done and the due bill for $2900 was surrendered by Long to the bank, $455.68, credited on Long's note for interest, deducted and a new due bill (No. 21,231) issued, payable to bearer as before and the same handed to Long for $2,444.32. (Transcript, page 48.) This was done six days after the service on the bank of the writ of attachment from said State court. This second due bill for $2,444.32 was duly presented to the bank through the Clearing House and paid in cash. On December 7th, 1897, plaintiff in State court (defendant in error) filed a

bill of discovery with interrogatories in the action, and a writ of *scire facias* was served upon Long, who filed his answer January 31st, 1898. (Transcript, pages 50 to 63, inclusive.)

On December 15th, 1897, plaintiff in said State court (defendant in error) filed a rule for judgment against the Chestnut Street National Bank, garnishee, on its answers to interrogatories in the attachment proceedings (Transcript, page 56), and this rule was pending when George H. Earle, Jr., entered his appearance in said State court action (Transcript, pages 63, 64), and caused it to be suggested of record that he had been duly appointed and qualified as Receiver of said bank under the laws of the United States (Transcript, page 64), and filed a motion (rule) to vacate and dismiss the attachment against said bank, for the reason that said court has not jurisdiction in such an action under section 5242 of the Revised Statutes of the United States (Transcript, pages 64, 65), and in support thereof filed an affidavit setting forth that as such Receiver, under direction of the Comptroller of the Currency of the United States, he had taken and was then in possession of the "books, records, and assets of "every description of said banking association, and is now "administering the duties of such trust." (Transcript, pages 65, 66.) The foregoing proceedings upon the part of the Receiver of the Chestnut Street National Bank (plaintiff in error) in the action in said State court, were had on May 5th, 6th, and 7th, 1898. The rule of said Receiver to vacate and dismiss the attachment proceedings was filed May 7th, 1898.

The said court heard argument upon the rule filed by plaintiff in said State court action (defendant in error) on December 15th, 1897, for judgment against the Chestnut Street National Bank, garnishee, upon its answers to interrogatories and the rule of the Receiver of the bank, filed May 7th, 1898, to vacate and dismiss the attachment proceedings for want of jurisdiction of the court, under section 5242 of the Revised Statutes of the United States together, and on May 21st, 1898, filed its findings in the case in writing. (Transcript, pages 66,

67.) The rule of December 15th, 1897, for judgment was made absolute, and the rule of May 7th, 1898, to vacate and dismiss the attachment was discharged and judgment was entered against plaintiff in error. (Transcript, pages 66, 67.)

The State court on the same day filed an opinion in the case (Transcript, pages 67, 68, 69), and on the same day, May 21st, 1898, plaintiff in said State court action (defendant in error) caused to be issued a writ of *fieri facias* (execution) upon the judgment against the plaintiff in error. (Transcript, page 69). Thereupon the Receiver of said bank (plaintiff in error), by direction of the Comptroller of the Currency, appealed from the judgment of said Court of Common Pleas to the Supreme Court of Pennsylvania, Sitting in and for the Eastern District, at Philadelphia, and the cause was certified upon appeal to said Supreme Court on June 4th, 1898 (Transcript, pages 69, 70), and on January 2d, 1899, assignments of error were filed in said Supreme Court of Pennsylvania, alleging want of jurisdiction for the reasons aforesaid. (Transcript, pages 70, 71.)

The case came on to be heard in the said Supreme Court of Pennsylvania, and on January 30th, 1899, the judgment of said Common Pleas Court was affirmed and so entered upon the records of the court, and there was filed on the same day an opinion in the case as follows:—

"SUPREME COURT OF PENNSYLVANIA.

Commonwealth, to use, &c., vs. *Chestnut Street National Bank* et al., *Appellants.*	January Term, 1898. No. 222.

"FILED January 30th, 1899.

"*Per Curiam;*—The judgment is affirmed on the opin-"ion of the learned president of the court below."

The case is reported in 189 Pa. St., page 606.

From this final judgment of the Supreme Court of Pennsylvania the case comes into this court upon writ of error, caused to be issued by the Receiver of said bank (plaintiff in error), by direction of the Comptroller of the Currency of the United States. (Transcript, pages 1 to 12, inclusive, and pages 71, 72, 73.) The only questions raised in the case are as to the jurisdiction of the Court of Common Pleas of Philadelphia County, Pennsylvania, a court of that State, to attach the Chestnut Street National Bank and George H. Earle, Jr., its Receiver (an officer of the United States, acting as such by authority of the laws of the United States), particularly relying upon that portion of section 5242, United States Revised Statutes, which says:—

> "No attachment, injunction, or execution shall be "issued against such association or its property be- "fore final judgment in any suit, action, or proceed- "ing in any State, county, or municipal court."

Questions Involved and the Manner in which they are Raised.

1. The State court had jurisdiction of Long, acquired by service of its writ of summons in *assumpsit*. The judgment against Long is valid, and upon it the State court had jurisdiction of any other garnishee than a National bank by issuance and service (as in the case at bar) of a writ of *attachment* sur *judgment* returnable to it, but the issuing and serving of such a writ against a National banking association (as was done here) or its property is powerless, utterly null and void, and confers no jurisdiction because Congress—the supreme law-making power of the land as to National banks—has deemed it prudent to exempt them and their property from all *mesne* process by *attachment, injunction, or execution*, and has forbidden "any State, county or munic- "ipal court" from issuing such *mesne* process "in any "suit, action, or proceeding." (*a.*) It is immaterial whether the legislation of Congress upon this subject be

regarded as wise or otherwise, its power to so legislate is unquestioned, and this court has already construed this United States Statute (section 5242) now under consideration, as we understand it, in favor of our contention in *Pacific National Bank* vs. *Mixter*, 124 U. S., 721. (*b.*) In our brief of the argument we will undertake more fully to present reasons for differing from the views of the defendant in error and the lower State court as expressed in its filed opinion, and will now in the statement of the case only say, that as nearly as we understand the points made against our contention, they are as follows: That while it is conceded that proceedings "such, for "instance, as a foreign attachment for a debt due by it" (meaning the bank), are prohibited by the United States Statute (section 5242), or, again using the language of the learned court below, "Were this attachment issued "against the bank for a debt due by it, then the claim "of the Receiver to exemption from such attachment "would be valid; but it is not for an indebtedness of the "bank that an attachment was served on it. The at-"tachment is for an indebtedness by Long, and the pur-"pose of the attachment is not to obtain a judgment for "a debt due by the bank, but to inquire and determine "whether it has any money or property of Long which "is subject to an execution at the suit of his creditors." (Transcript, page 68.) In short, while it is plainly admitted that some attachment proceedings by State courts are prohibited by the United States law cited, it distinguishes between them and puts this particular form of attachment proceedings without the prohibition; it divides these proceedings into two classes. (1) Attachment proceedings within the meaning of section 5242; (2) Attachment proceedings without the meaning of that statute, placing in the second class the proceedings now under immediate consideration in the case at bar. We contend that inasmuch as the statute says "no attachment, injunction, or "execution shall be issued * * * in any suit, action, "or proceeding, in any State, county, or municipal "court," the prohibition is too broad to admit of any

such division into classes, and that all attachments, injunctions or executions without any exception, are included, and intended to be included, in the prohibition, which exempts all National banks, whether solvent or insolvent. The attempt to make such a classification under the wording of the section named is illogical, and when the admission is made, as is done in the filed opinion of the learned Common Pleas Court of Philadelphia County, that an "attachment" in the case at bar has been served against the Chestnut Street National Bank, it admits away its case, the proceedings are null and void, and should have been vacated and dismissed.

(*c.*) In fact the differences, if any, suggested as existing between the writ of attachment *sur* judgment and a writ of foreign attachment under the statutory laws of Pennsylvania are slight, and go to the form rather than to the substance, the results secured are practically the same, but if the attachment *sur* judgment (attachment execution) contains elements of an injunction or of an execution, the prohibition of section 5242 embraces it all in clear diction. (*d.*) The State court could not acquire jurisdiction by the voluntary appearance or consent of the bank, or in any way, except by Act of Congress, therefore the filing of an answer to interrogatories by the bank in the proceedings invested it with no jurisdiction, and is of no effect in the case. Every step taken in the matter is utterly null and void. (*e.*) The learned president of the Common Pleas Court of Philadelphia County closes his opinion filed in the case with these words:—

> "The foregoing reasoning has the support of the "Court of Appeals of New York, which held that "section 5242 of the Revised Statutes of the United "States does not prohibit the issue of an attachment, "injunction, or execution against an insolvent Na- "tional bank. Corn Exchange Bank *vs.* Blye, 101 "N. Y., 303."
>
> (Transcript, pages 68, 69.)

The above-cited case, Bank *vs.* Blye, 101 N. Y., 303, decides the direct contrary to what is stated above, and holds that the issue of an attachment, injunction, or execution by a State court *is* prohibited by section 5242, but the action before the court was one in "replevin," not an attachment, injunction, or execution, and the court properly held, we think that an action in replevin is not included within the prohibition. The learned court below was guided into the error by some misleading or misquoted report of the case.

II. A SPECIFICATION OF ERRORS RELIED UPON.

1. It was error of the Pennsylvania Supreme Court to affirm the judgment of the lower court against the plaintiff in error entered on May 21st, 1898, making absolute the rule of defendant in error, then plaintiff, for judgment on answers (to interrogatories) of the bank as garnishee, and discharging the rule, upon behalf of the bank filed by plaintiff in error, "to vacate and dismiss the at-"tachment" (the bank then being in the hands of a Receiver appointed by the Comptroller of the Currency), for the reason that said State courts had not jurisdiction of the remedy by writ of attachment, injunction, or execution against the bank or against any National banking association, or its property in *mesne* process under section 5242 of the United States Revised Statutes.

2. It was error of the Pennsylvania Supreme Court not to have reversed the judgment of the lower court, and not to have ordered it to vacate and dismiss all attachment proceedings and to set aside all findings and judgments based thereon against plaintiff in error or the bank because null and void for want of jurisdiction in said courts, under the laws of the United States, more particularly section 5242 of the Revised Statutes.

3. It was error of the Pennsylvania Supreme Court not to have reversed the judgment of the lower court and

not to have ordered the attachment proceedings vacated and dismissed, for the reason that the issuance and service, returnable to said lower court of a writ of attachment *sur* judgment, or attachment execution, under the statutory laws of that State, against a National banking association or its property before final judgment against it, whether solvent or insolvent, is in conflict with that portion of section 5242, United States Revised Statutes, which says, "No attachment, injunction, or execution "shall be issued * * * in any suit, action, or pro- "ceeding, in any State, county, or municipal court."

4. It was error of the Pennsylvania Supreme Court not to have reversed the judgment entered May 21st, 1898, in the lower court, ordering the vacation and dismissal of the attachment proceedings, for the reason that while proceedings in attachment *sur* judgment (or attachment execution)—under the local laws of the State, issued and served in *mesne* process against the bank, and made returnable to said State court—were pending, the bank, on December 23d, 1897, became insolvent, and a Receiver, under section 5234, United States Revised Statutes, on January 29th, 1898, was appointed by the Comptroller of the Currency of the United States, who—qualifying prior to the judgment aforesaid upon the answers to interrogatories filed by the bank as garnishee—had taken and held possession of the books, records, and assets of every description of said banking association, as such Receiver, under the direction of the Comptroller of the currency, and was then, and is now, administering the duties of that trust, all of which was suggested of record in said lower court, and appears of record therein. The plaintiff in error, having entered his appearance and filed an affidavit in support of the suggestion of record and of a rule duly filed to vacate and dismiss the attachment for want of jurisdiction for reasons stated, long before judgment aforesaid in the lower State court was given. We call attention, more in detail, in this connection to the following points of error:—

(*a.*) The Receiver of an insolvent National bank is under the sole direction of the Comptroller of the Currency of the United States (section 5234, United States Revised Statutes). No power lies in any court or in any other person to direct the administration of his trust.

(*b.*) The Receiver of an insolvent National bank is required "to pay over all moneys to the Treasurer of the "United States, subject to the order of the Comptroller, "and make report to the Comptroller of all his acts and "proceedings" (section 5234, United States Revised Statutes), and it would be in violation of this statute for plaintiff in error to pay over moneys upon the judgment or order of May 21st, 1898, of the lower court of the State of Pennsylvania.

(*c.*) Only after "full provision first made for refunding "to the United States any deficiency in redeeming the "notes" of an insolvent bank is the Comptroller authorized to make a ratable dividend of the money so paid over to him by the Receiver (section 5236, United States Revised Statutes), and it would violate this statute if plaintiff in error undertook to pay a dividend upon the judgment or order of the Pennsylvania State court.

(*d.*) All claims against a Receiver of an insolvent National bank must first be either "proved to the satisfaction of the Comptroller or adjudicated in a court of competent jurisdiction." (1) No claim has been proved to the satisfaction of the Comptroller. (2) No claim has been adjudicated in a court of competent jurisdiction, because the lower court could not acquire jurisdiction by attachment in *mesne* process, which is the only ground for jurisdiction. (Sections 5236 and 5242, United States Revised Statutes.)

(*e.*) The judgment of the lower State Court of May 21st, 1898, requires plaintiff in error to pay $2900, and

interest thereon from October 28th, 1897, contrary to the ruling of this court that the Comptroller, in order to make dividends ratable pay interest, if at all, from the date of the bank's suspension, in this case from December 23d, 1897.

(*f.*) The defendant in error's only ground for a claim against plaintiff in error is technical, and is based solely upon the circumstance that the writ of attachment was served upon the bank six days prior to the payment in full by it of its $2900 indebtedness to Long. (Clearing House due bill.) There is no real merit to the claim of defendant in error; the debt to Long in his account was paid in full by the bank. Long remained a debtor to it on his note. The plaintiff in error, if required to pay, as adjudged by the lower State court, and affirmed by the Supreme Court of Pennsylvania, will pay for a second time out of the assets of the bank, to which the creditors are entitled to a ratable dividend, because of the legal force and effect of the attachment proceedings and for no other reason to a judgment creditor of Long, a sum of money for which it is not indebted to Long, it having been paid in full to him, and for which Long makes no claim whatsoever against plaintiff in error.

(*g.*) If the power lies in the State courts of Pennsylvania to so command, by attachment in *mesne* process, Receivers of National banks as to prevent the application of their assets in the manner prescribed by the National Bank Act, the power is not limited to an execution for a ratable dividend upon the sum adjudged due, as the lower State court "inclined" to do in this case, it extends to a full payment, violating that portion of section 5242, United States Revised Statutes, which says:—

> "All payments of money to either (shareholders "or creditors of a National bank) made after the "commission of an act of insolvency, or in contem- "plation thereof, made with a view to prevent the

"application of its assets in the manner prescribed "by this chapter, or with a view to the preference "of one creditor to another, except in payment of its "circulating notes, shall be utterly null and void."

(*h.*) Long had no ownership in, control over, or title to any property in the hands of the plaintiff in error, even basing the claim of defendant in error upon the fiction of the law alleged here to apply, for if the $2900 evidenced by the Clearing House due bill was a deposit of money, technically unpaid because of a prior service upon the bank as garnishee with a valid attachment (although in fact paid in full to Long six days thereafter), the deposit of money was not property of Long, but when made became a loan to the bank, and all property rights therein passed to the bank, leaving only an obligation of repayment in kind, upon demand. If Long has title and ownership to any specific property in the hands of plaintiff in error, or of any Receiver of a National bank, if necessary, he can have recourse to a writ of replevin for its recovery, but not a writ of attachment, injunction, or execution in *mesne* process.

(*i.*) The proceedings in issue in the case at bar have no element in them of an action in *replevin.*

(*j.*) Garnishing by writ of attachment in *mesne* process in a State court a National bank is prohibited by section 5242 of United States Revised Statutes, whether the bank is a solvent "going" institution or an insolvent one in the hands of a Receiver appointed by the Comptroller, and all such proceedings are utterly null and void.

III. A BRIEF OF THE ARGUMENT.

1. This court has jurisdiction to review upon writ of error a judgment of the highest court of a State when based upon proceedings under laws of the State that are

claimed to be in conflict with the laws of the United States.

Farmers and Mechanics' National Bank *vs.* Dearing (decided October, 1875), 91 U. S., 29.

California Bank *vs.* Kennedy (decided May 24th. 1897), 167 U. S., 362.

2. The constitutionality of the National Bank Act has been judicially determined, and the supremacy of Congressional over State legislation in matters of National banks is not here disputed.

Davis *vs.* Elmira Savings Bank (decided March 2d, 1896), 161 U. S., 275.

3. In the case at bar attachment was issued, against a National bank as garnishee under a State law, in a State court, by a judgment creditor—in an action in which the bank became a party as garnishee only subsequent to the judgment—and served in *mesne* process on October 28th, 1897. The bank failed December 23d, 1897, the U. S. Comptroller of the Currency appointed a Receiver on January 29th, 1898, who moved to vacate and dismiss the attachment for want of jurisdiction of the court on May 7th, 1898, and on May 21st, 1898, judgment was entered by the State court against the Receiver upon answers of the bank as garnishee (filed prior to its failure), to the interrogatories in the attachment proceedings.

The Receiver, before judgment, during pendency of the attachment, had entered his appearance in the case and made a suggestion of record as to his appointment as Receiver, and as to his taking and holding possession as such, of all the assets of the bank—thereby substituting himself as garnishee upon behalf of the bank for the purpose of moving "to vacate and dismiss the attachment"—all done in face of the prohibition contained in section 5242, U. S. Rev. Stat., which reads:—

> "No attachment, injunction, or execution shall be "issued against such association or its property be-"fore final judgment in any suit, action, or proceed-"ing in any State, county, or municipal court."

4. That the portion of section 5242 just quoted prohibits "State, county, or municipal courts" from issuing an "attachment, injunction, or execution" in *mesne* process "in any suit, action, or proceeding" against National banks, is conceded, as we understand it, both by the defendant in error and by the State courts of Pennsylvania, as stated in the order, judgment, findings, and opinion filed by the lower court.

Transcript, pages 66, 67, 68, and 69.

The attachment, however, it says, must be limited to a debt due by the bank in contradistinction from one due by a judgment debtor, and to a direct suit against the bank, such, for instance, as a "foreign attachment" as defined in the laws of Pennsylvania, providing also the bank is insolvent, because it is claimed this portion of the section must be read in connection with what precedes it which has reference only to insolvent associations. It is contended by the defendant in error, moreover, that the particular attachment in the case at bar is not an attachment within the meaning of the prohibition, but is entirely without it. That it really is not an attachment against the bank at all, but simply an attachment against the judgment debtor, and so states on the face of the writ, and that the proceeding, so far as the bank is concerned, is only a warning served upon it, and the bringing it into court, to there inquire and determine whether or not it has in its possession property of the judgment debtor, subject to levy and execution; that while the laws of Pennsylvania name the writ "attachment execution," and upon its face it is called "attachment *sur* judgment," it is nothing more or less than "garnishment," and that "garnishment" is not within the meaning of the prohibition.

In our endeavor to reach a true construction of the portion of section 5242 under immediate discussion in its bearing upon the case at bar, we present our views somewhat in detail under the following headings:—

(*a.*) The construction of section 5242, as given by the courts.

(*b.*) The sections of the Revised Statutes of United States particularly relied upon and the attachment laws of Pennsylvania providing for "attachment execution."

(*c.*) What is garnishment?

In Pacific National Bank *vs.* Mixter (decided February 20th, 1888), 124 U. S., 721. A National Bank Examiner was in charge of an embarrassed National Bank from November 20th, 1881, until March 18th, 1882, when the Comptroller permitted it to open its doors for business. On March 24th, 1882, creditors of the bank commenced suits, issuing orders of attachment with the original writs, as could be done under the laws of Massachusetts, and attaching deposits to the credit of the bank in two other banks of the same city. This action was brought in the United States Circuit Court. Before the issues were determined, the bank a second time closed its doors, and on May 22nd, 1882, the Comptroller appointed a Receiver. Before this, however, at once upon the commencement of the action, the bank secured a dissolution of the attachments, by giving bonds for which the laws of the State provided and it put up securities to secure the surety on the bonds from liability. The Receiver entered his appearance in the actions, filed answers upon behalf of the bank, and moved the discharge of the attachments and dismissal of the actions. His motions were all overruled and judgments entered against the bank. Thereupon he came to this court upon writs of error.

Not resting with these acts the Receiver, failing in his motions and defenses at law, filed a bill in equity in the same court against the attaching creditors, and the sureties on the bonds given to dissolve the attachments with the object of reducing to possession the securities held for protection against liability by the sureties, and to restrain the attaching creditors from enforcing the attachment bonds on the ground "that the attachments made in said actions were unauthorized, illegal, and void."

This bill in equity was dismissed by the Circuit Court (22 Fed. Rep., 694), and came upon appeal to this court.

The substantial facts in these cases are the same as the

facts in the case at bar, when carefully analyzed, and the principles of law governing them are equally applicable to this case.

1. The creditors attach in *mesne* process the deposits belonging to the defendant bank, the deposits happening to be in two other banks at the time, but it matters not whether in the vaults of other banks or its own, the deposits belonged to the defendant bank.

2. In the case at bar, Long, from a legal standpoint, is the attaching creditor to the use of the defendant in error—his judgment creditor—and sues the bank for an adjudication of his alleged claim, and attaches in *mesne* process the deposits in the bank itself by serving a writ of attachment execution upon the bank.

3. The difference between Mixter's case and the one at bar is in form, but not in substance. Mixter, at the inception of the suit, having then a claim against the bank, under the laws of Massachusetts, sought (1) a personal judgment, (2) attached the assets of the bank to await a determination of the suit; whereas the defendant in error in the case at bar, at the inception of its suit against Long under the laws of Pennsylvania, having no claim against the bank, simply sought a personal judgment against Long and the bank was not in any way a party to the action, it had no day in court in that proceeding whatever, when personal judgment was obtained against Long, then by the attachment-execution proceeding, and issuance and service of the attachment *sur* judgment against the bank, Long to the use of the defendant in error commences for the first time an action against the bank, for an adjudication of his claim, but commences it by an attachment in *mesne* process, garnishment, seizure by notice to the bank, restraining payment of the alleged indebtedness of the bank to Long, pending the adjudication. This *mesne* process is forbidden by section 5242, and the court acquired no jurisdiction of the bank by the issue and service of

that writ. The proceeding was not only voidable, but utterly null and void, just as the attachments in *mesne* process of Mixter in the Massachusetts case were declared null and void. In the Mixter case the original writ issued was of a twofold character, the bank was served as a defendant *in personam,* and at the same time attached *in rem,* before judgment was entered against it. The attachment in the Mixter case is vacated and dismissed by the decision of this court and the attachment proceedings are declared so utterly null and void, that the bonds given for dissolution of the attachments are declared also utterly null and void, but the adjudication of the claim by the judgment *in personam* remains, and of this the court had jurisdiction because acquired independently of the attachment, and upon this adjudicated claim the Comptroller, under section 5236, is authorized to pay dividends from the assets in the hands of the Receiver.

In the case at bar, the jurisdiction of the court in the suit of Long to the use of the defendant in error, over the bank (plaintiff in error) is entirely dependent upon the validity of the issuance and service of the writ of attachment execution against the bank in *mesne* process. It is conceded that the jurisdiction is acquired only by this writ of attachment *sur* judgment; the court therefore had no jurisdiction and its judgment of May 21st, 1898, is not a valid adjudication of any claim, but falls with the attachment, and is utterly null and void.

The Mixter case was in the United States Circuit Court, but this court holds that court had no jurisdiction, for, the reason, stated in its opinion on pages 726, 727 of report, viz.:—

> "The prohibition does not in express terms refer to "attachments in suits begun in the Circuit Courts of "the United States, but as by section 915 of the Re- "vised Statutes those courts are not authorized to "issue attachments in common law causes against the "property of a defendant, except as 'provided by the " 'laws of the State in which such court is held for the " 'courts thereof.' It follows that, as by the Amend-

"atory Act of 1873, now part of section 5242 of the "Revised Statutes, all power of issuing attachments "against National banks before judgment, has been "eliminated from State Statutes, there cannot be any "laws of the State providing for such a remedy on "which the Circuit Court may act. The law in this "respect stands precisely as it would if there were no "State law providing for such a remedy in any case. "It was suggested in argument that the prohibition "extended only to the use of the remedy by State "courts, and that the remedy itself still remained "to be resorted to in the courts of the United States. "But we do not so understand the law. In our "opinion the affect of the Act of Congress is to deny "the State remedy altogether, so far as suits against "National banks are concerned, and in this way oper-"ates as well on the courts of the United States as on "those of the States, although the provision was evi-"dently made to secure equality among the general "creditors in the division of the proceeds of the prop-"erty of an insolvent bank, its operation is by no "means confined to cases of actual or contemplated "insolvency. The remedy is taken away altogether "and cannot be used under any circumstances. It "was further said that if the power of issuing at-"tachments has been taken away from the State courts, "so also is the power of issuing injunctions. That "is true."

The opinion throughout is directly pertinent to the case at bar. We quote again from page 726 of report:—

"The fact that the amendment of 1873, in relation "to attachments and injunctions in State courts, was "made a part of section 5242 shows the opinion of "the revisers and of Congress that it was germane to "the other provision incorporated in that section, and "was intended as an aid to the enforcement of the "principle of equality among the creditors of an in-"solvent bank. But, however that may be, it is clear

"to our minds that, as it stood originally as a part of "section 57, after 1873, and as it now stands in the "Revised Statutes, it operates as a prohibition upon "all attachments against National banks under the "authority of the State courts. That was evidently "its purpose when first enacted, for then it was part "of a section which, while providing for suits in the "courts of the United States, or of a State, as the "plaintiff might elect, declared in express terms that "if the suit was begun in a State court no attach-"ment should issue until after judgment. The form "of its re-enactment in the Revised Statutes does not "change its meaning in this particular. It stands now, "as it did originally, as the paramount law of the "land that attachments shall not issue from State "courts against National banks, and writes into all "State attachment laws an exception in favor of Na-"tional banks. Since the Act of 1873 all the attach-"ment laws of the States must be read as if they "contained a provision in express terms that they were "not to apply to suits against a National bank."

In National Bank *vs.* Colby (decided by this court at October Term, 1874), 21 Wall., 609, it is held:—

"1. The property of a National bank organized un-"der the Act of Congress of June 3d, 1864, attached "at the suit of an individual creditor after the bank "has become insolvent, cannot be subjected to sale "for the payment of his demand, against the claim "for the property by a Receiver of the bank subse-"quently appointed."

In the case of C. Cadle, Jr., Receiver of the First National Bank of Selma, *vs.* Buford A. Tracy et al., in equity (decided by the United States Circuit Court for the Southern District of New York, April 23d, 1873), 11 Blatch., 101, *held*, Blatchford, J., rendering the opinion of the court:—

"T., a resident of Kentucky, and a creditor of a Na-"tional bank incorporated under the Act of Congress

"of June 3d, 1864 (13 U. S. Stat. at Large, 99), and "located in Alabama, brought a suit against it in the "Supreme Court of New York, to recover a debt al- "leged to be due from the bank to him, and in such "suit attached certain moneys in the possession of a "National bank in New York, as the property of the "Alabama bank. The suit was commenced by at- "tachment and publication of the summons. C., who "was appointed Receiver of the Alabama bank, under "the provisions of the said Act, was, on his own ap- "plication, submitted as defendant in such suit, in "place of the Alabama bank, with the like force and "effect as if the suit were continued in the name of "said bank, and thereupon put in an answer therein, "setting up a want of jurisdiction in the State court "over him, as an officer, or over the bank, or over "the subject of the action, and other defenses. The "suit was tried, and a judgment was rendered that "T. recover of C., as Receiver of the bank, a certain "sum, 'to be levied and collected of the moneys and " 'property whereon an attachment has been heretofore " 'levied in this action.' Afterwards, C. filed a bill in "equity in this court against T. and the New York "bank, praying for an injunction against T. from pro- "ceeding further on his attachment, or on any judg- "ment in the suit in which such attachment was is- "sued, and for the payment to him, C., of the moneys "in the hands of the New York bank. The Code of "Procedure of New York (section 227) provides "that in an action arising on contract, for the recovery "of money only, 'against a corporation created by, or " 'under the laws of, any other State, government, or " 'country,' the plaintiff, at the time of issuing the "summons, or at any time afterwards, may have the "property of such corporation attached, in the man- "ner thereinafter prescribed, as a security for the sat- "isfaction of such judgment as the plaintiff may re- "cover. The same Code (section 427) provides that "an action 'against a corporation created by, or under

"'the laws of, any other State, government, or "'country,' may be brought in the Supreme Court of "New York by a plaintiff not a resident of the State "of New York, 'when the cause of action shall have "'arisen, or the subject of the action shall be situated, "'within the State.' The bill proceeded on the "ground that the State court had no jurisdiction of "the suit against the Alabama bank, because it could "not acquire jurisdiction *in invitum* of a suit against "a corporation created under said Act, and also be-"cause the cause of action in such suit did not arise "within the State of New York, *held*:—

"(1.) That, so far as the provision of section 427 "of the Code of New York was concerned, the Su-"preme Court of New York had jurisdiction over "the suit.

"(2.) That the effect of the provisions of the fifty-"seventh section of the said Act of June 2d, 1864, "was to deprive the State court of jurisdiction over "the suit.

"(3.) That C. was not estopped by the proceed-"ings in the suit in the State court from questioning "the jurisdiction of that court over him, or its jur-"isdiction to render against him the judgment which "it did render.

"(4.) That C. was entitled to the relief prayed "for.

"A National bank incorporated under said Act can "be sued only in the courts designated in the fifty-"seventh section thereof.

"Whether the cause of action in the said suit arose "in New York *quære*.

"In the case of a corporation aggregate, no waiver "of an objection to jurisdiction can be produced, by "the fact that the corporation appears and pleads by "attorney."

In the case of Garner *vs.* Second National Bank of Providence *et al.*, decided by Judge Lacombe, of the

United States Circuit Court for the Southern District of New York, March 12th, 1895, 66 Fed. Rep., 369:—

"The plaintiff, a resident of New York, brought an "action in State court against defendant National "bank and individuals, all resident of Rhode Island. "A warrant of attachment was taken out against the "property of all three defendants, and certain moneys "of the defendant bank were attached in the hands "of the Fourth National Bank of the city of New "York. The usual order of publication was served "with the summons, January 7th and 8th, in the State "of Rhode Island. The defendant National Bank "filed its petition and bond for removal to the United "States Circuit Court, and after reviewing the ques- "tions arising upon the petition for removal, the court "sustained the application for removal, and says, on "page 379:—

" 'The case being properly removed, it only " 'remains to determine the motion to vacate " 'the attachment and service of summons. The " 'statutes of the United States expressly pro- " 'hibit the issuing of an attachment against a " 'National bank or its property before final " 'judgment in any State court. The Revised " 'Statutes United States, section 5242.

" 'Bank *vs.* Mixter, 124 U. S., 721, 8 Su- " 'preme Ct., 718.

" 'The attachment was, therefore, improperly " 'issued, and should be vacated, and inasmuch " 'as the summons was personally served out of " 'the State, such service should be set aside and " 'declared void. Motion granted.' "

In *New York* there are several decisions construing this statute. *Southwick* vs. *Bank* (decided by the Supreme Court of New York, at March Term, 1876), *7 Hun.*, *96*, holding that:—

"The amendment to the National Banking Act, "passed in 1873 (chapter CCLXIX., section 2), pro-

"viding 'that no attachment, injunction, or execu-
" 'tion shall be issued against such association or
" 'its property before final judgment in any such suit,
" 'action, or proceeding in any State, county, or mu-
" 'nicipal court' relates only to suits, actions, or pro-
"ceedings against associations located where the suit
"is brought, and not to cases where the action is
"against a non-resident corporation,"

was directly overruled by that court in *Rhoner* vs. *Bank*, decided at April Term, 1878, *14 Hun., 126*, saying that:—

"An attachment cannot be issued against a Na-
"tional bank before final judgment, even though it
"has property within this State, and is located and
"carries on business in another State. (Southwick
"*vs.* First National Bank of Memphis, 7 Hunn., 96.
"Overruled.)"

And the same court (Supreme Court of New York), in *The Central National Bank* vs. *The Richland National Bank of Mansfield*, decided November, 1876, 52 Howard's Practice, 136, held that:—

"An attachment cannot be issued against a Na-
"tional bank or its property before final judgment in
"any suit, action, or proceeding in any State, county,
"or municipal court. The issuing of an attachment
"against these institutions or their property is strictly
"prohibited by Congress, and it is only where juris-
"diction cannot be acquired without resort to attach-
"ment that the power of Congress to inhibit, or
"rather to postpone the use until final judgment of
"such provisional remedy seems to be at all ques-
"tionable.

"This prohibition does not in any manner inter-
"fere with the general jurisdiction of State courts
"over National banks; it does not take away the
"jurisdiction over such foreign corporations having
"property within this State; that jurisdiction is not

"acquired by virtue of provisions of the code proced-
"ure relating to this particular provisional remedy.
"The jurisdiction is acquired by the service of the
"summons, and that is effected by the provisions of
"section 134 of the Code, or where personal service
"cannot be had upon an officer, then it may be had
"by publication under the provisions of section 135."

In *William H. Robinson*, respondent, *vs. The National Bank of Newberne*, appellant (decided by the Court of Appeals of New York, June 15th, 1880), *81 N. Y., 385*, the court says:—

"The provision of said Act (section 5242) prohibit-
"ing the issuing of an attachment, injunction, or ex-
"ecution against such an association, or its property
"before final judgment applies only to an association
"which has become insolvent, or to one about to
"become so, as specified in the preceding part of the
"section." Danforth, J., says in his opinion on page
"393:—

" 'The subject matter of the section is the
" 'transfer of property by a banking association
" 'made after the commission of an act of in-
" 'solvency, or in contemplation thereof,'

"and when made under the circumstances therein
"stated, such transfer, it says,

" 'shall be utterly null and void, and no attach-
" 'tachment * * * shall be issued against
" 'such association or its property before final
" 'judgment in any suit, action, or proceeding
" 'in any State, county, or municipal court.'

"We concur with the general term in the opinion
"that these words of prohibition must be deemed to
"have the same relation as the other things prohib-
"ited, and apply only to insolvent corporations, or
"one about to become so, and that the object of the
"entire section is to prevent one creditor of the cor-
"poration whose assets are insufficient to meet its lia-
"bility from obtaining a preference, whether it is

"sought through a voluntary assignment or transfer "of the payment, or the form of a legal proceeding "* * * the attachment is not to bring the de- "fendant into court; its object is to give the plaintiff "execution against the thing attached. (Kilburn *vs.* "Woodworth, 5 Johns., 37); it does not go beyond it; "* * * it is confined to the property taken, and "if it cannot be maintained the plaintiff is remedi- "less."

The foregoing decision of the Court of Appeals of New York was in 1880, and the following two decisions were rendered by the same court in 1882 and 1883:—

In the case of *The National Shoe and Leather Bank of the City of New York*, appellant, *vs. The Mechanics National Bank of Newark*, decided by the Court of Appeals of New York on June 20th, 1882, 89 N. Y., 440, it was held that

"An order vacating an attachment issued before "judgment is not reviewable here. A Receiver of an "insolvent National bank appointed after the issuing "of an attachment against it may, under the Code of "Civil Procedure (section 682), move to vacate the "attachment without being made a party to the "action."

And in the case of *Samuel Raynor* et al., appellants, vs. *The Pacific National Bank of Boston*, respondents, *93 N. Y. Reports, 371.*

"An attachment issued against a National bank "which is at the time insolvent is invalid (United "States Revised Statutes, section 5242), and is not "made valid by the subsequent acquisition of the "bank of further capital. The fact that the bank, "after issuing of the attachment, pays in full does "not estop it from questioning the validity of the at- "tachment. The provision of the National Bank "Act prohibiting attachment in such cases is not re- "pealed by the Act of Congress of July 12th, 1883,

"providing that the jurisdiction for suits thereafter "brought against National banks shall be the same "as for suits against State banks, and repealing laws "inconsistent therein."

The facts in the foregoing case are practically the same as in Bank vs. *Mixter,* supra.

Then comes the decision in *The Corn Exchange Bank* vs. *Blye,* which is relied upon by the learned president of the Common Pleas Court of Philadelphia County, as stated in his opinion filed in the case at bar.

Transcript, pages 68 and 69.

This case was decided by the Supreme Court of New York in General Term, October, 1885, *37 Hun., 473.* It came to the General Term from the Supreme Court of New York, and it is described as an "Appeal from an "order setting aside the requisition issued by the plain- "tiff to the sheriff of Orange County, directing him to "take into his possession certain bonds and certificates "claimed by the plaintiff in an action for the recovery "of their possession."

The syllabus is as follows:—

Requisition in an Action to recover Personal Property When it may Issue in an Action against the Receiver of a National Bank. United States Revised Statutes, Section 5242.

"In this action of replevin brought against the Re- "ceiver of a National bank to recover bonds and certifi- "cates claimed to belong to the plaintiff, a requisition "issued by the plaintiff to the sheriff, directing him to "take possession thereof, was set aside upon the applica- "tion of the defendant, upon the ground that its issue was "prohibited by section 5242 of the United States Revised "Statutes.

"*Held,* that the prohibition contained in that section "against the issue of any 'attachment, injunction, or exe-

"'cution' against such an "association or its property be-
"'fore final judgment in any suit, action, or proceeding
"'in any State, county, or municipal court,' did not apply
"to such a requisition as was issued in this case; that it
"was only intended to prevent the interference with the
"assets or property owned by the bank itself, and not with
"such as might legally be claimed or proved to be the
"property of others."

In the opinion by the court, rendered by Daniels, J., Brady, J., and Davis, P. J., concurring, it is said:—

"Its (section 5242) object was to prevent the assets of
"an insolvent National bank from being appropriated or
"being interfered with by a creditor of the bank before
"the recovery of a final judgment in his action, and it has
"been so construed when it has been brought before the
"courts for consideration. (Robinson *vs.* Bank of New-
berne, N. Y., 81 N. Y., 385; Raynor *vs.* Pacific Bank,
93 *Id.*, 371; Rosenblatt *vs.* Johnston, 104 U. S., 462.)

"An action brought to recover the possession of prop-
"erty alleged not to be the property of the bank, and
"therefore not subjected to the custody or administration
"of its Receiver, is not included within the object or the
"language of this enactment. What it was designed to
"prevent was interference with the assets or property
"owned by the bank itself, and not those which might
"legally be claimed or proven to be the property of others.
"Its inhibition is that 'no attachment, injunction, or exe-
"'cution shall be issued against such association or its
"'property before final judgment in any suit, action, or
"'proceeding in any State, county, or municipal court.'
"The requisition of the plaintiff was in no sense an at-
"tachment, injunction, or execution; neither was it is-
"sued against the property of the association, but for the
"recovery of the possession of property claimed to belong
"to the plaintiff. This section of the statute has not pro-
"hibited a legal contest of this description; neither has it
"subjected the party asserting a right of this nature to
"any legal disability or restriction in the prosecution of

"the action. And it in no event can have the effect of "depriving the Receiver of any of the assets or property "owned by the bank or secure a preference to any cred- "itor therein. All that can be accomplished by it is to "secure the recovery of the possession of the property by "the plaintiff, if it shall prove to be able to support its "claim of title made to it. If that cannot be done, or "title shown to be in the defendant as Receiver, then the "property will necessarily be returned to him. The liti- "gation must be wholly and exclusively devoted to the "investigation of the question of title, and an action for "such an investigation has in no manner been affected "by this section of the statute; it is outside of the re- "straints contained in the statute, and has in no way been "prohibited."

The case was taken to the Court of Appeals of the State of New York and decided by that court January 19th, 1886, 101 N. Y., 303. The syllabus is as follows, viz.:—

"A Receiver of an insolvent National bank acquires no "right to property in the custody of the bank, which it "does not own, as against the owner, and the provision "of the United States Revised Statutes (section 5242), "prohibiting the issuing of an attachment, injunction, or "execution against such a corporation before final judg- "ment, was not intended to protect the Receiver's custody "as against such owner.

"Accordingly, *held*, that said provision did not prohibit "the issuing, in an action against the Receiver of a Na- "tional bank to recover possession of personal property, "of a requisition directing the sheriff to take into his pos- "session the property in question; that the Receiver, if "he desired to retain possession of the property during "the litigation, could only do so by giving the security "required, the same as other defendants in such an action."

And from the opinion of the court we quote as follows:—

"It (section 5242) specifically prohibits all transfers of "the corporate property made with a view to preferences,

"and so protects the creditors from any voluntary act of "the bank which selects out favored individuals for pay- "ment. But the bank may be passive and such individ- "uals gain a preference by a suit against the corporation, "preceded or accompanied by an attachment or injunction, "or after judgment enforced by an execution. These "three things were specifically prohibited by name, each "being process well known and accurately defined in the "law, and without any general words to carry the pro- "hibition beyond them. The Receiver, by his appoint- "ment, acquires no right to property in the custody of the "bank which the latter does not own, as against the real "owner; and the section in question was plainly not in- "tended to protect the Receiver's custody as against such "owner. It aims to protect the property of the bank in "his hands and not to give him arbitrary control of what "the bank does not own. If the latter should be held, "its injustice is well suggested by the general term in its "application to special deposits of customers left merely "for safekeeping. It does not alter the case that there "is a dispute about the title, and the Receiver claims to "be owner. He might make such a claim in any case. "No law makes him the inevitable stakeholder pending "the litigation. He may become so by giving the needed "security, and we can see no reason why he should be "exempted from that obligation which falls upon others. "The plaintiff is required to give such security as the con- "dition of the writ, and the Receiver need run no risk "in the performance of his duty. It is said the word " 'attachment' is used, not in the local sense affixed by "State enactments, but in a broader sense; and the defi- "nition of Bouvier is cited. But by that definition and in "every use of the term it always assumes title in the per- "son against whom the writ issues, and seeks to hold pos- "session of his property, and on the ground and for the "reason that it is his. *No nomenclature has ever made it "the equivalent of a writ of replevin, which issues upon a "theory exactly the reverse.*

"There is no collision of jurisdictions. The authority

"of the Federal courts over the assets and the right of its "officer to hold them is not questioned or invaded. No "property over which those courts have obtained jurisdic- "tion is interfered with. What is sought to be recovered "is property over which they have obtained no jurisdic- "tion, and as to which they have conferred no right upon "him."

The court, when it uses the description, "or after judgment enforced by an execution," seems to have in view a case similar to the one at bar, for after the judgment of May 21st, 1898, by Common Pleas Court against plaintiff in error, execution was issued in the case at bar. (Transcript, page 69). The foregoing decisions of New York State courts were all rendered before that of this court in Pacific National Bank *vs.* Mixter, *supra.*

In Maryland the question arose directly in *The Chesapeake Bank* vs. *The First National Bank of Baltimore, Garnishee of the First National Bank of Washington.* (decided by the Court of Appeals of Maryland, June 4th, 1874). *40 Maryland, 269.* Held:—

> "An attachment on warrant issued by a State court "to affect the funds of a National bank is illegal and "void, being in violation of section 57 of the Act of "Congress, chapter 106, approved June 3d, 1864, as "amended by section 2 of the Act of Congress, "chapter 26, approved June 3d, 1873, the latter sec- "tion providing 'that no attachment, injunction, or " 'execution shall be issued against such (banking) " 'association, or its property before final judgment " 'in any suit, action, or proceeding in any State, " 'county, or municipal court.' The second section "of the Act of Congress, chapter 269, approved March "3d, 1873, amending section 57 of the Act of Con- "gress, chapter 106, June 3d, 1864, is constitutional "and valid, being a provision to promote the effi- "ciency of the National banks in performing the "functions which they were designed to serve the

"Government and to protect them, not only against "interfering State legislation, but also against suits, "or proceedings in State courts by which their effi- "ciency would be impaired."

The facts of the case are stated in the opinion of the court—

"The appellant (Chesapeake Bank) on the 18th of "September, 1873, caused an attachment on warrant "to be issued out of the Superior Court of Baltimore "City to affect the property and credits of the First "National Bank of the city of Washington, D. C., "as a non-resident debtor, which was laid in the hands "of the First National Bank of Baltimore, as gar- "nishee. In October following, the garnishee filed a "motion to quash for reasons alleged and from the "judgment of the court quashing the writ, this ap- "peal is taken. It is conceded the decision of the "Superior Court was based upon the first reason stated "in the motion, as follows: "That said First National " 'Bank of Washington was, before said attachment, " 'and at the time of the issue thereof, and still is, " 'an association for the purpose of carrying on the " 'business of banking, organized duly under the Act " 'of Congress of June 3d, 1864, and that by the " 'second section of the Act of Congress, approved " 'March 3d, 1873, it is enacted that the fifty-seventh " 'section of the first mentioned Act be amended by " 'adding thereto the following: "that no attachment, " 'injunction, or execution shall be issued against such " 'association, or its property, before a final judgment " 'in any suit, action or proceeding, in any State, " 'county, or municipal court," and that by the force " 'of said section of said Acts the said attachment is " 'illegal and void.' "

The statute has been construed in other States:—

In Minnesota. In *First National Bank of Kasson* vs. *Ambrose La Duc* (decided by the Supreme Court of Min-

nesota, on November 20th, 1888), 39 Minn., 415, it is held:—

"The Federal statutes (U. S. Rev. St., section "5242), prohibit the issuance of writs of attachment "by the State courts before final judgment against "National banking associations or their property.

"An attachment and seizure of property made by "virtue of a writ so issued and served is illegal and "void and no jurisdiction over the person or property "of such an association is obtained thereby."

In Vermont. In *Safford* vs. *First National Bank of Plattsburg and Trustee* (garnishee) (decided by the Supreme Court of Vermont, at January Term, 1889), *61 Vt., 373*, the court decides:—

"Under U. S. Rev. St., section 5242, the property "of a National bank cannot be attached before final "judgment. The trusteeing a debt due such a bank "is in effect the attachment of the property of the "bank; hence when the only service on a non-resident "bank was by leaving a copy in the hands of the "trustee, such a service is void and the court obtains "no jurisdiction. The judgment overruling motion "to dismiss is reversed and motion sustained and cause "dismissed."

In *Georgia. The Planter's Loan & Savings Bank* vs. *Berry* (the statement of facts is in the case of the National Park Bank *vs.* Berry, 89 Ga., 33,) decided by the Supreme Court of Georgia, February 13th, 1893, 91 Georgia, 264. The syllabus reads:—

"The statute of the United States prohibits seizure "of property belonging to National banks *irrespective* "*to whether they be solvent or insolvent* before final "judgment by virtue of any attachment issued under "a State law, and returnable to a State court. *Any* "*such seizure is, therefore, void* and a bond given by a "National bank to dissolve such attachment *served* "*by summons of garnishment* is also void. The giv-

"ing of such bond is not an appearance in the attach-
"ment case, so as to make valid a judgment entered
"up on the bank in that case against the bank and the
"securities executing the bond. The judgment is
"wholly void and an affidavit of illegality made and
"filed by one of the securities in resistance to a levy
"upon his property under an execution founded on
"the judgment must be sustained. The judgment be-
"ing wholly void for want of jurisdiction in the court
"rendering it, affidavit of illegality is a proper de-
"fensive remedy."

Bleckley, Chief Justice, says:—

"How the statutes of the United States stand at
"the present time on the subject of protecting Na-
"tional banks against seizure of their effects by virtue
"of attachments in advance of final judgments, may
"be seen by reference to United States Revised Stat-
"utes, section 5242. The only words necessary to
"be now quoted are these: 'And no attachment, in-
" 'junction, or execution shall be issued against such
" 'association or its property before final judgment in
" 'any suit, action, or proceeding in any State, county,
" 'or municipal court.' The opinion, whether profes-
"sional or judicial, which construes this legislation as
"allowing seizure under attachment before final judg-
"ment in case the defendant bank is solvent, and pro-
"hibiting it only where the bank is insolvent, is
"manifestly unsound. Certainly, no such distinction
"is made in the letter, and we discern no necessity
"for it in the context or in the reason and spirit of
"the legislation. The statutory policy seems to be
"to prevent all preference or priority in claims against
"these banks sought to be acquired by seizure of ef-
"fects under State authority before final adjudica-
"tion of such claims, and to protect the banks from
"being weakened or crippled by such antecedent
"seizures. The National banks created by Con-
"gress are to control their own assets and resources,
"as against State interference at the instance of cred-

"and the extent of the power to be exercised by State "courts depend upon the permission of the United "States. The wrongs likely to be done by National "banks are of a pecuniary nature, and the banks "usually are amply able to make good any damage "which they may do, so that there is not the same "necessity for preventative remedies that there is with "individuals or corporations, for whose solvency less "stringent precautions are taken. We are of opinion "that the language of the statute must be read in "its natural sense, in accordance with what we un- "derstand to have been the view of the Supreme "Court of the United States in Bank *vs.* Mixter, *"supra."*

Sections 5234, 5236, 5242 of the U. S. Rev. Stat. are the sections particularly relied on as controlling this case.

Section 5234 provides for the appointment of the Receiver by the Comptroller of the Currency, and defines his duties as follows:—

"On becoming satisfied, as specified in sections "5226 and 5227, that any association has refused to "pay its circulating notes as therein mentioned, and "is in default, the Comptroller of the Currency may "forthwith appoint a Receiver, and require of him "such bond and security as he deems proper. Such "Receiver, under the direction of the Comptroller, "shall take possession of the books, records, and "assets of every description of such association; "collect all debts, dues, and claims belonging to it, "and upon the order of a court of record of com- "petent jurisdiction may sell or compound all bad "or doubtful debts, and on a like order may sell all "the real and personal property of such association "on such terms as the court shall direct, and may, if "necessary to pay the debts of such association, en- "force the individual liability of the stockholders. "Such Receiver shall pay over all money so made "to the Treasurer of the United States, subject to the

"order of the Comptroller, and also make report to "the Comptroller of all his acts and proceedings."

Section 5236 provides:—

"From time to time after full provision has been "first made for refunding to the United States any "deficiency in redeeming the notes of such associa- "tion. The Comptroller shall make a ratable divi- "dend of the money so paid over to him by such Re- "ceiver on all such claims as may have been proved "to his satisfaction, or adjudicated in a court of com- "petent jurisdiction, and as the proceeds of the assets "of such association are paid over to him, shall make "further dividends on all claims previously proved or "adjudicated, and the remainder of the proceeds, if "any, shall be paid over to the shareholders of such "association, or their legal representatives, in propor- "tion to the stock by them respectively held."

Section 5242 reads:—

"All transfers of the notes, bonds, bills of exchange, "or other evidences of debt owing to any National "banking association, or of deposits to its credit; all "assignments of mortgages, securities on real estate, "or of judgments or decrees in its favor; all deposits "of money, bullion, or other valuable thing for its "use, or for the use of any of its shareholders or "creditors, and all payments of money to either made "after the commission of an act of insolvency, or in "contemplation thereof, made with a view to prevent "the application of its assets in the manner prescribed "by this chapter, or with a view to the preference of "one creditor to another, except in payment of its "circulating notes, shall be utterly null and void. "No attachment, injunction, or execution shall be is- "sued against such association, or its property, before "final judgment in any suit, action, or proceeding in "any State, county, or municipal court."

The proceedings in attachment execution under the laws of Pennsylvania are so called because the writ is founded upon a judgment, and as this is the writ under discussion, we will quote from the laws of the State providing therefor. See Pepper & Lewis' Digest, commencing vol. I., page 1939, section 55 (1836, June 16th, P. L., 755, section 35):—

> "In the case of a debt due to the defendant, or of "a deposit of money made by him, or of goods or "chattels pawned, pledged, or demised as aforesaid, "the same may be attached and levied in satisfaction "of the judgment in the manner allowed in the case "of a foreign attachment, but in such case a clause "in the nature of a *scire facias* against a garnishee "in foreign attachment shall be inserted in such writ "of attachment requiring such debtor, depositary, "bailee, pawnee, or person holding by demise, as "aforesaid, to appear at the next term of the court, "or at such other time as the court from which such "process may issue shall appoint, and show cause "why such judgment shall not be levied of the effects "of the defendant in his hands."

Again, on page 1942, section 56, *Id.* (1836, June 16th, P. L., 755, section 36):—

> "It shall be the duty of the officer charged with "the execution of such writ, to serve a copy thereof "upon the defendant in such judgment and upon "every person and corporation within its proper "county named in the said writ of attachment, in the "manner provided for the service of a writ of sum- "mons in a personal action."

And again, on page 1942, section 58, *Id.* (1836, June 16th, P. L., 755, section 37):—

> "From and after the service of such writ all stock "belonging to the defendant in the corporation upon "which service shall be so made, and all debts and all

"deposits of money and all other effects belonging "or due to defendant by the person or corporation "upon which service shall be so made, shall remain "attached in the hands of such corporation or person "in the manner heretofore practiced and allowed in "the case of foreign attachment."

Again, on page 1943, section 59, *Id.* (1836, June 16th, P. L., 755, section 38):—

"If judgment shall be given for the plaintiff in such "attachment, it shall be lawful for him to have execu-"tion thereof, as follows, to wit: (1) If the property "attached be stock in a corporation, as aforesaid, the "execution shall be by writ of *fieri facias* against the "original defendant by virtue of which such stock, "or so much thereof as shall be necessary to satisfy "the judgment and costs, may be sold by the sheriff, "as in other cases; (2) If the property attached be a "deposit in money or a debt due, as aforesaid, exe-"cution shall be had in the manner allowed in the case "of effects in the hands of a garnishee in a foreign "attachment."

And again, on page 1946, section 64 (1872, April 5th, P. L., 43, section 1):—

"In all cases where execution attachments have "been, or which shall hereafter be, issued out of any "Court of Common Pleas (or district court) of this "Commonwealth attaching debts, moneys, stocks, or "other property in the hands of any persons or cor-"porations as garnishees, and when from any cause "proceedings have been stayed on the judgment on "which such execution attachments have been issued, "it shall be lawful for the defendant, or defendants "in the judgment on which said attachments shall "have been issued, to file a bond with one or more "sureties, to be approved of by the court issuing said "attachment, in such amount as the court shall di-

"rect, conditioned that the defendants shall pay to "the plaintiff, on the determination of the case, what- "ever amount shall be finally adjudged to be due by "the garnishees under the said attachments, if such "amount shall be required to pay the judgment and "costs, and on filing such bond, approved as aforesaid, "the said garnishee or garnishees shall thereupon be "discharged from all further liability under said at- "tachment, but the cause may be prosecuted to final "judgment for the purpose of ascertaining the amount "due by the garnishee, but the defendant and his sure- "ties in the bond shall alone be liable to pay such "judgments and costs."

And again, on page 1947, section 65, *Id.* (1863, April 22d, P. L., 527, section 1):—

"Where in any attachment-execution, or *scire* "*facias* on foreign attachment issued out of any court "of record in this State, the garnishee, after issue "joined therein, shall be found to have in his pos- "session or control no real or personal property of "the defendant, nor to owe him any debt other than "such property or debts as shall have been already "admitted by the plea or answers of the garnishee, "or in case without going to trial the plaintiff shall "take judgment against the garnishee for what shall "be so admitted in his plea or answer, then, and in "either such case, the garnishee shall be entitled, in "addition to the costs already allowed by law, to a "reasonable counsel fee out of the property in his or "their hands, to be determined and taxed in case of "dispute by the court, or by some person appointed "for that purpose."

The only exemption to attachment execution under this law is on page 1946, section 63, *Id.* (1845, April 15th, P. L., 459, section 5):—

"The wages of any laborers, or the salary of any "person in public or private employment, shall not

"be liable to attachment in the hands of the em-
"ployer."

In Pennsylvania the laws provide for attachment proceedings as follows:—

1. A "domestic attachment" is a proceeding against an inhabitant of the State who absconds, &c., with intent to defraud creditors or avoid service of process.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. I., 108 *et seq.*

2. A "foreign attachment" is a proceeding against non-residents of the State.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. I., section 75 *et seq.*

3. An attachment, under the "Fraudulent Debtors' Act of 1869," applies to removal or assignment or concealment of property, and to fraud in contracting the debt.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. I., section 51 *et seq.*

4. An attachment execution or attachment *sur* judgment is, as its name implies, an attachment begun after judgment has been first entered against the defendant.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. II., section 3253 *et seq.*

Brewster's Practice is a recognized authority upon all subjects of practice in the State of Pennsylvania.

The "domestic," "foreign," and "fraudulent debtor" proceedings before named are generally used where an attachment is sought at the inception of the suit, and have a twofold purpose: (1) Personal service upon the defendant against whom a judgment is desired; (2) an immediate lien on defendant's property to await and satisfy such judgment, if attached. The first is by the writ of summons in *assumpsit*, &c., and the second by seizure by writ

of attachment of defendant's property, subject to direct levy and execution, or by garnishing defendant's property in the hands of his debtors that is not subject to direct levy and execution.

In each of them garnishment is an important feature of the attachment proceedings. It is not necessary for the attachment to issue at the inception of the suit; personal service may first be had, and attachment proceedings begun after personal service upon the defendant, but before judgment. In each of the first three proceedings named the claim of the plaintiff not having been determined before judgment, the defendant is protected from oppressive suits by requiring, as a prerequisite to attachment, an affidavit as to the truth and justness of the claim, and a bond of indemnity against damages in case of failure of suit. The dual proceedings being (1) *in personam* (seeking a personal judgment against defendant); (2) *in rem* (seizure or garnishment of property of defendant awaiting the issue *in personam*).

In the "attachment execution" proceeding, the fourth named, the one now under consideration, the defendant in error first pursued Long, *in personam*, to judgment before pursuing him *in rem*. It is upon the judgment *in personam* against Long that the writ of attachment is issued and served against the bank as garnishee. The writ of attachment is practically the same as it would have been if issued against the bank, garnishee, under "domestic," "foreign," or "fraudulent debtor" proceedings—the bank, by a summary proceeding commenced against it, is attached in mesne process summoning it into court to appear and answer within fifteen days or judgment *sec. reg.*

No more effectively could an injunction restrain than an "attachment execution." It operates as an injunction, also as an execution or aid in execution. It has in it all the elements expressly prohibited and intended to be prohibited by Congress in the letter and spirit of the enactment in the Revised Statutes, section 5242.

Shinn on Attachment & Garnishment, vol. I., section 191 *et seq.;* also *Id.*, vol. II., section 466 *et seq.*

In the case of Ege *vs.* Koontz (decided by the Supreme Court of Pennsylvania in 1846), 3 Pa. St., 109, it is *held*:—

> "The legal effect of an attachment laid upon a debt "is, to restrain the garnishee from paying over the "money, either to his individual creditor or to the at- "taching creditor, until the attachment is disposed "of, and then only according to the result of that "proceeding."

Ancillary, in a sense, to the action against Long *in personam*, in which judgment has been entered and in which sense only, that is, from the standpoint of the judgment, it is sometimes called "final process;" in another sense, that of its relation to the garnishee, it is the commencement of an original "suit, action, or proceed- "ing" by the judgment debtor (Long) to the use of the judgment creditor of Long (defendant in error) by attachment in *mesne* process against the bank, or its Receiver. "Proceedings upon attachment execution bear a "close analogy to those in foreign attachment, subsequent "to the judgment aganst defendant."

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. II., section 3261;

Shinn on Attachment & Garnishment (1896), vol. II., section 469 *et seq.;*

Gochenaur's Executors *vs.* Hostetter, 18 Pa. St., 414;

Childs *vs.* Digby, 24 Pa. St., 26-27;

Shinn on Attachment and Garnishment (1896), vol. II., section 469 and cases cited in note.

Garnishment is a supplemental proceeding to execution.

Freeman on Execution (2d ed.), vol. II., section 416;

Am. & Eng. Enc. of Law, vol. VIII., page 1101.

Garnishment is a mode of attachment, a seizure by notice.

Am. & Eng. Enc. of Law, vol. VIII., 1101 *et seq.;*
Rood on Garnishment (1896), section 192 (page 238);
Shinn on Attachment & Garnishment (1896), vol. II., section 467.

General nature of garnishment.

Am. and Eng. Enc. of Law, vol. VIII., page 1100;
Rood on Garnishment (1896), chapter I.;
Shinn on Attachment & Garnishment (1896), chapter XXIII.

"Garnishment is a proceeding by which the plaintiff, in a suit to recover on a debt, may institute "another suit at law, in lieu of the defendant, against "a debtor of the defendant, without the defendant's "concurrence, and it may be against his will to subject the money or property in the hands of such "debtor to the satisfaction of the plaintiff's judgment "in the first suit."

Shinn on Attachment & Garnishment (1896), vol. II., section 465 *et seq.*

"The right of attachment by garnishment is not "known to the common law. It depends wholly "upon the provisions of the statute for its validity "and effect, and it cannot be extended beyond the "strict provisions thereof."

Shinn on Attachment & Garnishment, vol. II., section 485.

National, State, and municipal governments and public officers are exempt from garnishment. (Among other reasons, because it is against public policy.)

Rood on Garnishment (1896), sections 25, 26.

The Federal government, the State, the District of Columbia, a county or borough, a city, the town, a school district cannot be made a garnishee.

Shinn on Attachment & Garnishment (1896), vol. II., section 500, and note on page 873 and cases cited.

A treasurer or other officer of a National, State, or municipal government is beyond the reach of a process of garnishment.

Id., section 503.

In this connection we quote from the opinion in Farmer's & Mechanic's National Bank *vs.* Dearing, decided by this court at October Term, 1897, error to the Court of Appeals of the State of New York, *91 U. S., 29*. The usury laws of the State of New York were held to be in conflict with the laws of the United States, and the judgment of the Court of Appeals of that State was reversed. Mr. Justice Swayne, rendering the opinion of this court, on page 33 says:—

"The constitutionality of the Act of 1864 (National "Bank Act) is not questioned. It rests on the same "principle as the Act creating the Second Bank of "the United States. The reasoning of Secretary "Hamilton, and of this court in McCulloch *vs.* Mary"land (4 Wheat., 316), and in Osburne *vs.* The Bank "of the United States (9 *Id.*, 708), therefore applies. "The National banks organized under the Act are "instruments designed to be used to aid the Govern"ment in the administration of an important branch "of the public service. They are means appropriate "to that end. Of the degree of the necessity which "existed for creating them Congress is the sole judge. "Being such means brought into existence for the "purpose, and intended to be so employed, the States "can exercise no control over them, nor in anywise "affect their operation, except in so far as Congress

"may see proper to permit. Anything beyond this "is 'an abuse, because it is the usurpation of power " 'which a single State cannot give' against the "National will. 'The States have no power, by tax- " 'ation or otherwise, to retard, impede, burden, or " 'in any manner control the operation of the consti- " 'tutional laws enacted by Congress, to carry into exe- " 'cution the powers vested in the general govern- " 'ment.' "

Bank of the United States *vs.* McCulloch, *supra;*
Weston & others *vs.* Charleston, 2 Pet., 466;
Brown *vs.* Maryland, 12 Wheat., 419;
Dobbins *vs.* Erie County, *Id.*, 419.

"The power to create carries with it the power to "preserve. The latter is a corollary from the former.

"The principle announced in the authority cited is "indispensable to the efficiency of the independence, "and, indeed, to the beneficial existence of the gen- "eral Government, otherwise it would be liable in the "discharge of its most important trusts, to be an- "noyed and thwarted by the will or caprice of every "State in the Union. Infinite confusion would fol- "low. The Government would be reduced to a piti- "able condition of weakness. The form might re- "main, but the vital essence would have departed."

In view, therefore, of the fact that "National banks "organized under the Act are instruments designed to be "used to aid the Government in the administration of an "important branch of the public service," and were created and are controlled solely by the laws of the United States, and in a sense are agents of the United States, it is in line with the exemption of the United States "Gov- "ernment" and its public officers from being subjected to the process of garnishment, that National banks should be so exempted, and the construction, we claim, for section 5242 is the natural one, and in accord with ruling principles and reason.

The Receiver of a National bank appointed by the Comptroller of the Currency, as provided by law, is presumed to be appointed by the approval and concurrence of the Secretary of the Treasury, within the meaning of section 2, article II., of the Constitution of the United States, and is an officer of the United States.

Price *vs.* Abbott, 17 Fed. Rep., 506;
Frelinghuysen *vs.* Baldwin, 12 Fed. Rep., 395;
Armstrong *vs.* Ettlesohn, 36 Fed. Rep., 209;
In re Petition of Chetwood, 165 U. S., 443.

In the bill for discovery in aid of execution with interrogatories filed by the defendant in error in the case at bar in the Common Pleas Court, No. 4, of Philadelphia County, on December 7th, 1897 (Transcript, pages 51 to 56, inclusive), no specific allegation is made that the Chestnut Street National Bank is indebted to Long in the sum of $2900 and interest from October 28th, 1897, nor that the bank has in its possession any stocks or personal property belonging to Long, but in the answer of Long to the interrogatories attached to the bill of discovery and propounded to him by defendant in error, Long says that the bank is neither indebted to him or holds any stocks or property belonging to him whatsoever.

In the interrogatories attached to the bill of discovery put to Long, defendant in error asks, Interrogatory No. 11: "Do you own choses in action or personal property? "If you answer aye, describe the same fully; state where the "same now is, in whose custody or control, and what "is the extent of your interest therein."

Interrogatory No. 12: "Have you in your own right "moneys which you have, or which are placed out at "interest, or invested in stocks, bonds, loans, or evidences "of indebtedness of any person or company, incorporated "or otherwise, from which you are entitled to, or may

"derive income or other return? If you answer aye, "state what money you have, and describe the said stocks, "bonds, loans, or evidences of indebtedness, with the names "and residences of the persons liable to you on account "of the same, the times when and the place where the "income derived therefrom is payable, and what is the "extent of the said income."

(Transcript, page 55.)

To these interrogatories Long answered as follows:—

"11. To the eleventh interrogatory:

"I own no choses in action or personal property "save my wearing apparel and a few personal ar- "ticles, not exceeding in all $300 in value.

"12. To the twelfth interrogatory:

"I have no moneys at interest or invested in stocks, "bonds, loans, or evidences of indebtedness of any "person or company, incorporated or otherwise."

(Transcript, page 62.)

In the interrogatories attached to the bill of discovery, this further question is put to Long:—

"No. 16: Did you not receive on November 3d, "1897, from the Chestnut Street National Bank their "due bill for $2444.32, and collect the same in cash? "If so, have you still same, or a part thereof, in your "possession? If you answer 'No'; what disposition "have you made of same?"

(Transcript, page 56.)

To this interrogatory Long answered as follows:—

"No. 16 to the sixteenth interrogatory: I did re- "ceive on November 3d, 1897, from the Chestnut "Street National Bank, their due bill for $2444.32, "and collected the same in cash. I have no part of "said sum now in my possession. I have spent the

"whole of it, partly for living expenses, $576.95 for "rent due by me, and $910.58 for interest due upon "a bond and mortgage on my Virginia property, "held by the estate of Ario Pardee."

(Transcript, page 62.)

It will be remembered that on November 3d, 1897, the balance of the $2900, $455.68, was ordered credited by Long on account of interest due on his note to the bank, making the payment of the bank to Long in full.

It has been said by the learned counsel for defendant in error:—

"The act of attachment is merely to require the "bank, instead of paying to Long such dividend as "may be awarded to him upon his deposit, to pay it "to his judgment creditor in satisfaction of his judg- "ment."

(Passing, for the sake of argument, the fact that the bank is not indebted to Long)—

We answer, if the power lies in the State court to order upon a writ of attachment in *mesne* process, garnishing a National bank, or the Receiver of an insolvent National bank, to pay a judgment creditor the debt due by it to the judgment debtor, the power is included not only to pay by dividends, but to pay in full, for if the State court has jurisdiction by attachment at all, it has the same power that it would have in a case other than one against a National bank, and it was this power that Congress has deemed it wise to arbitrarily eliminate from the State courts—illustrating, a National bank contemplates insolvency, liabilities $100,000; assets $50,- 000, with 100 depositors; it owes 10 depositors $50,000 and the remaining 90 depositors $50,000. The 10 depositors confess judgments aggregating $50,000 to their creditors in a State court, and their then judgment creditors at once seize by notice, (garnish) the assets of the bank (Receiver) by issuing and serving writs of at-

tachment *sur* judgment, by this process securing to themselves all the assets, leaving nothing to be administered upon in the hands of the Receiver by the Comptroller of the Currency under section 5234, United States Revised statute.

The rights of the creditors of the creditors of an insolvent National Bank are not greater than those of its immediate creditors, and it must be observed that the application to vacate and dismiss the attachment is in this case not made by the bank for the benefit of its stockholders, but by the Receiver of the bank for the benefit of its creditors.

We cite also—

Auburn Savings Bank *vs.* Hayes, 61 Fed. Rep., 911;
The Ocean National Bank *vs.* Carll, 7 Hun., 237;
Wade on Attachments, section 332;
Drake on Attachments (7th ed.), section 452;
Bank of Northern Liberties, Garnishees, *vs.* Jones *et al.*, 42 Pa. St., 536;
White *vs.* Knox, 111 U. S., 784;
National Security Bank *vs.* Butler, 129 U. S., 223.

A Table of the Statutory Laws Cited.

Revised Statutes of the United States, sections 5234, 5236, 5242.

Pepper & Lewis' Digest (Penna. Laws), vol. I., page 1939, section 55 (1836, June 16, Penna. Laws, 755, section 35).

Id., page 1942, section 56 (*Id.*, section 36).

Id., page 1942, section 58 (*Id.*, section 37).

Id., page 1942, section 59 (*Id.*, section 38).

Id., page 1946, section 64 (1872, April 5th, Penna. Laws, 43, section 1).

Id., page 1947, section 65 (1863, April 22d, Penna. Laws, 527, section 1).

Id., page 1946, section 63 (1845, April 15th, Penna. Laws, 459, section 5).

A Table of the Cases and Authorities Cited.

Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, Trustee, &c., appellee, *vs.* George H. Earle, Jr., Receiver of the Chestnut Street National Bank, appellant, 189 Pa. St., 606.

Pacific National Bank *vs.* Mixter, 124 U. S., 721.

Corn Exchange National Bank *vs.* Blye, 101 N. Y., 303.

Farmers and Mechanics' National Bank *vs.* Dearing, 91 U. S., 29.

California Bank *vs.* Kennedy, 167 U. S., 362.

Davis *vs.* Elmira Savings Bank, 161 U. S., 275.

Garner *vs.* Second National Bank, 66 Fed. Rep., 369.

Southwick *vs.* Bank, 7 Hun. (N. Y.), 96.

Rhoner *vs.* Bank (overruling Southwick *vs.* Bank), 14 Hun. (N. Y.), 126.

The Central National Bank *vs.* The Richland National Bank, 52 How. Pr. (N. Y.), 136.

Robinson *vs.* Bank, 81 N. Y., 385.

The National Shoe and Leather Bank *vs.* Bank, 89 N. Y., 440.

Raynor *vs.* Bank, 93 N. Y., 371.

The Chesapeake Bank *vs.* Bank, Garnishee, 40 Maryland, 269.

Bank *vs.* La Due, 39 Minn., 415.

Safford *vs.* Bank and trustee (garnishee), 61 Vt., 373.

The Planter's Loan & Savings Bank *vs.* Berry, 91 Georgia, 264.

Freeman Manufacturing Company *vs.* Bank, 160 Mass., 398.

Gochenaur's Executors *vs.* Hostetter, 18 Pa., St., 414.

Childs *vs.* Digby, 24 Pa. St., 26, 27.

Price *vs.* Abbott, 17 Fed. Rep., 506.

Frelinghuysen *vs.* Baldwin, 12 Fed. Rep., 395.

Armstrong *vs.* Ettlesohn, 36 Fed. Rep., 209.

In Re Chetwood, Petitioner, 165 U. S., 443.

Auburn Savings Bank *vs.* Hayes, 61 Fed. Rep., 911.

The Ocean National Bank *vs.* Carll, 7 Hun. (N. Y.), 237.

Cadle, Receiver of the First National Bank of Selma, *vs.* Tracy, 11 Blatch., 101.

Bank of Northern Liberties, Garnishees, *vs.* Jones, 42 Pa. St., 536.

National Bank *vs.* Colby, 21 Wall., 609, 613.

White *vs.* Knox, 111 U. S., 784.

National Security Bank *vs.* Butler, 129 U. S., 223.

Brewster's Practice (Com. Pleas) (2d ed., 1896), vol. I., sections 108 *et seq.*, 75 *et seq.*, 51 *et seq.*; vol. II., sections 3253 *et seq.*, 3261 *et seq.*

Shinn on Attachment & Garnishment, vol. I., section 191 *et seq.*, chapter XXIII.; vol. II., sections 465 *et seq.*, 467, 469 *et seq.*, and cases cited in note, 485, 500, and note and cases cited, 503.

Freeman on Executions (2d ed.), vol. II., section 416.

Am. & Eng. Enc. of Law, vol. VIII., pages 1100, 1101 *et seq.*

Rood on Garnishment (1896), sections 25, 26, 192.

Id., chapter I.

Wade on Attachments, section 332.

Drake on Attachments (7th ed.), section 452.

Respectfully submitted,

ASA W. WATERS,
W. H. ADDICKS,
Attorneys for Plaintiff in Error.

ADDITIONAL ARGUMENT FOR PLAINTIFF IN ERROR.

1. The principal question involved is whether the attachment issued in this case is forbidden by that portion of section 5242, United States Revised Statutes, which says: "No attachment, injunction, or execution shall be issued against such association, or its property before final judgment in any suit, action, or proceeding in any State, county, or municipal court." This Act of Congress does not take away from State courts jurisdiction of National banks now granted except as to attachments, injunctions, and executions before final judgment against them.

Pacific National Bank *vs.* Mixter, 124 U. S., 721;
Raynor *vs.* Bank, 93 N. Y., 371;
Bank of Montreal *vs.* National Bank, 1 N. Y. Supplement, 852;
Corn Exchange National Bank *vs.* Blye, 101 N. Y., 303;
The Chesapeake Bank *vs.* Bank, 40 Maryland, 269;
Bank *vs.* La Due, 39 Minn., 415;
Safford *vs.* Bank, 61 Vt., 373;
Bank *vs.* Berry, 91 Georgia, 264;
Freeman *vs.* Bank, 160 Mass., 398;
Garner *vs.* Bank, 66 Fed. Rep., 369.

2. An attachment execution was issued by the State Court of Pennsylvania on October 5th, 1897, and was served upon the Chestnut Street National Bank at eleven o'clock and thirty-five minutes A. M., on October 28th, 1897, pursuant to the provisions of the Act of June 16th, 1836, of the laws of Pennsylvania (Pepper & Lewis' Digest, vol. I., page 1939), providing, among other things, that a debt or deposit of money due a judgment debtor "may be attached and levied in satisfaction of the judgment in the manner allowed in the case of foreign attachment." (Transcript, pages 27, 28.)

3. By the Act of March 20th, 1845, Pa. Pamphlet Laws, 188, section 4 (P. & L. Digest, page 1942), it was not necessary to

serve the judgment debtor with a copy of the writ of attachment if a non-resident, and it is held by the courts of Pennsylvania that the return by the sheriff of *nihil habet* is conclusive as to non-residence. The return in this case was so made. (Transcript of record, page 28. See also Transcript, page 23.) The judgment debtor, Long, was a non-resident, and the proceedings were therefore in fact as well as in form those of foreign attachment.

4. Section 37 of the Act of June 16th, 1836 (P. & L. Digest, page 1942), states the effect of the service of this writ of attachment execution in words as follows: "From and after "the service of such writ, all stock belonging to the defendant "in the corporation upon which service shall be so made, and "all debts and all deposits of money and all other effects be- "longing or due to defendant by the person or corporation "upon which service shall be so made shall remain attached in "the hands of such corporation or person in the manner here- "tofore practiced and allowed in the case of foreign attach- "ment."

5. The Act of June 13th, 1836, of Pa. Pamphlet Laws provides for foreign attachment. (Pepper & Lewis' Digest, vol. I., pages 2155–2179.)

6. By section 55 of the Act of June 13th, 1836 (P. & L. Digest, page 2168), providing for foreign attachment:—

> "After judgment as aforesaid, it shall also be lawful "for the plaintiff to exhibit in writing to every garnishee "as aforesaid all such interrogatories as he may deem "necessary touching the estate, and in the hands of the "defendant, in his possession or charge, or due and owing "from him, as the case may be, to the defendant at the "time of the service of such writ, or at any other time, "and cause the same to be filed of record in the cause."

Pursuant to the foregoing provision, interrogatories in writing were exhibited to the Chestnut Street National Bank by the defendant in error (then plaintiff), and judgment creditor

in the State court, and the same were filed of record in the cause. (Transcript, pages 45, 46.)

7. By section 56 of the Act of June 13th, 1836, aforesaid (P. & L. Digest, page 2168), "Whenever interrogatories shall be filed as aforesaid, it shall be the duty of the court, upon the motion of the plaintiff, to grant a rule upon the garnishee to appear before the said court at a time and place in such rule to be named, and

> "then and there to exhibit in writing, under his oath or "affirmation, full, direct, and true answers to all and sin- "gular the interrogatories of the plaintiff exhibited and "filed as aforesaid, or such of them as the court shall "deem pertinent and proper."

Pursuant to this provision of the State law a rule was granted upon the garnishee—the Chestnut Strect National Bank—"to appear and answer the interrogatories within twenty days, or judgment *sec. reg.*" (Transcript, page 46.)

8. Answers of the Chestnut Street National Bank, garnishee, to these interrogatories, in compliance with the rule of the court, were filed November 24th, 1897. (Transcript, pages 47, 48, 49, and 50.) Among other things, the bank answers as follows:—

> "*Second.*—To the second interrogatory, I answer, that "said bank has had business relations with the defendant. "That there was no balance in his favor then (at the time "of the service of the writ), and there has been none since "up to this date in said The Chestnut Street National "Bank, but that said James Long was indebted to said "bank in the sum of $17,831, with interest from the "twenty-second day of April, 1897.
>
> "*Third.*—In answer to the third interrogatory I answer, "that at the time the writ in the above case was served "upon the Chestnut Street National Bank, the said bank "was not indebted to the said defendant in any manner "whatsoever, so far as is known to the said bank, and "the said bank has no knowledge that at the time the

"writ in the above case was served the said defendant, "James Long, held any bill, bond, note, or other instru- "ment of writing then due upon which the said bank had "become in any manner liable. Prior to the service of "the writ in the above case upon the said bank, to wit, "September 20th, 1897, the said bank issued a duebill "for the sum of $2900, of which the following is a true "and correct copy:—

"Number 20,968.

"CLEARING-HOUSE DUE BILL.

"THE CHESTNUT STREET NATIONAL BANK.

"PHILADELPHIA, Sept. 20, 1897.

"Due by the Chestnut Street National Bank to banks, "two thousand nine hundred and —— dollars.

"This due bill is only good when signed by one and "countersigned by another authorized person, and is "payable only in the exchanges through the clearing- "house the day after issue.

W. W. PRICE,
Teller.

"$2,900.00.

"Countersigned:

"W. STEELE,
"*Cas.*"

The copies of the duebills are on page 48 of the Transcript. The duebills are payable "to banks," and "only in the exchanges through the clearing house the day after issue," and it is so stated on their face. They are practically payable to bearer, and when issued to Long, the bank was no more definitely indebted to Long, because of handing him the duebill, than it would be if it had handed him its circulating bank note payable on demand to bearer. The authority to give the duebills and to issue its circulating bank bills comes to it from the same section of the Revised Statutes (5136), and in our opinion when Long presented to the bank the duebill issued to him for $2900, on September 20th, 1897, he was doing nothing more than if he had presented, for example, a $1000 cir-

culating note of the bank, and had offered it in payment of the interest on his indebtedness, and had accepted in return the difference above the interest in circulating bank notes of smaller denomination of the bank, and that the simple fact of the presentation of this duebill by Long does not show an indebtedness to Long because the duebill on its face just as the circulating notes of the bank (money) are payable to bearer, and there was no obligation to Long by the bank outstanding at the time the writ of attachment was served upon it, nor since, and on or about November 3d, 1897, all duebills to Long were paid in full. The answer of the bank denies any indebtedness to Long, and it was error of the State court to enter a judgment upon the answer under the rulings of the Supreme Court of Pennsylvania. It should have gone to a jury in a case where the jurisdiction was unquestioned.

McCallum *vs.* Lockhart, 179 Pa. St., 427;
Hagy *vs.* Hardin, 186 Pa. St., 428.

9. By the Act of March 29th, 1891, Pa. Pamphlet Laws, 35, section 2 (P. & L. Digest, page 2167)—

> " Each said garnishee so appearing shall thereupon be
> " deemed and taken to be a party to the cause, and shall
> " be entitled to all process of the court looking to speed-
> " ing the cause and securing final disposition thereof."

So that the Chestnut Street National Bank became a party defendant when summoned by this writ of attachment execution to an original proceeding begun by the issue and service of the writ upon it. The process was one against the bank *in personam*. It served notice upon the bank that it was enjoined at its personal risk from thereafter making any settlement with Long without warrant, as we claim, and caused it to come into court and put it to the expense of a legal defense, and enjoined the bank from making any change in the status of its dealings with Long. The bank, from October 28th, 1897, was attached by the service of this writ, and it will be noted that the section 5242 aforesaid prohibits an attachment against such association *in personam* as well as *in rem*, for it says: " No attachment, injunction, or execution shall be issued against such association or its property."

10. In the answers of the Chestnut Street National Bank, on page 49 of the Transcript, we find the following:—

"*Fifth.*—And when the writ in the above case was "served the said bank held, as collateral security for the "indebtedness to it mentioned in the answer to the sec- "ond interrogatory, seventy-seven shares of Natural Gas "Trust stock, of the value of $160 per share, and thirty- "three shares of the capital stock of the Eighth National "Bank of Philadelphia, of the par value of $264 per "share."

It was also error of the State court of Pennsylvania to enter judgment upon the answer of the bank (under the rulings of the Supreme Court of that State), even in a case where it had jurisdiction in the matter of the stock, for it is held by those courts that when stock is admittedly assigned to another as collateral security (as is done in this answer), by the person in whose name the stock stands (the judgment defendant), it is considered as not in the name of the defendant, but standing in the name of the garnishee who holds it as collateral security.

Early's Appeal, 89 Pa. St. 411;
Eby *vs.* Guest, 94 Pa. St., 160.

And it is provided by sections 32 and 33 of the Act of June 13th, 1836, P. L. 755 (P. and L. Digest, page 1937), as follows:

"In the case of stock, if it shall be held in another "name than that of the real owner thereof, the plaintiff "shall file in the office of the prothonotary of the court "an affidavit stating that he verily believes such stock to "be really the property of the defendant, and shall enter "into a recognizance with two sufficient sureties con- "ditioned for the payment of such damages as the court "may adjudge to the party to whom such stock shall "really belong, in case such stock should not be the "property of the defendant."

"Upon the filing of such affidavit and recognizance it "shall be lawful for the prothonotary to issue process in

"the nature of an attachment against such stock with a "clause of summons in the person in whose name the "same may be held in the nature of a writ of *scire facias* "against garnishees in a foreign attachment, and there- "upon the plaintiff may proceed to judgment execution "and sale of the stock in the manner allowed in cases of "foreign attachment."

No affidavit and no recognizance was filed in the office of the Prothonotary of the Court of Common Pleas No. 4, of Philadelphia County, and, therefore, under the laws of Pennsylvania the proceedings against the stock authorized by the finding of the court (Transcript, page 66), and the issue of the writ of *fi. fa.* for the sale of the stock (Transcript, page 69) were improper and invalid in any case.

11. There are other errors in the findings in this case, under the laws of Pennsylvania, provided the court had jurisdiction, but it is not deemed necessary to go further in this direction; our motive in pursuing the matter in detail as far as we have done being for the purpose of enlightening the court upon the circumstance that this bank, and plaintiff in error, have, in fact, been attached within the meaning of section 5242 aforesaid.

12. Subsequent to the issuing of this attachment writ, on October 5th, 1897, and to its service upon the bank, October 28th, 1897, and the filing of interrogatories in the attachment proceedings for the bank to answer, on November 6th, 1897, and the filing of the answers upon behalf of the bank to the interrogatories in the attachment proceedings, on November 24th, 1897, to wit, on December 23d, 1897, the bank failed, and, on January 29th, 1897, a Receiver was appointed by the Comptroller of the Currency of the United States, under section 5234 of the United States Revised Statutes; and under this last-named section, after giving bond and security as deemed proper by the Comptroller of the Currency,

"such Receiver, under the direction of the Comptroller, "shall take possession of the books, records, and assets

"of every description of such association; collect all "debts and claims belonging to it; and * * * such "Receiver shall pay over all moneys so made to the "Treasurer of the United States, subject to the order of "the Comptroller, and also make report to the Comp- "troller of all his acts and proceedings."

This Receiver, from the time of his appointment, under direction of the Comptroller, represents the bank, its stockholders, and its creditors.

Case *vs.* Terrell, 11 Wall., 199.

The Receiver of an insolvent National bank appointed by the Comptroller of the Currency is the agent of the United States, and not an agent or officer of any court; and, even though not a party to a suit against the bank in a State court, the Receiver of a National bank may appear in that court and contest the validity of the judgment.

Denton *vs.* Baker, 93 Fed. Rep., 46.

A suit against the Receiver of a National bank to compel him to pay out of the funds in his hands as Receiver moneys claimed by the complainant is a suit arising under the laws of the United States.

Hot Springs Independent School District *vs.* First National Bank of Hot Springs, 61 Fed. Rep., 417.

A Receiver may sue either in his own name or in the name of the bank.

National Bank *vs.* Kennedy, 17 Wall., 19;

Denton *vs.* Baker, 79 Fed. Rep., 192–194; 93 Fed. Rep., 46.

13. Long (the judgment defendant) had no claim whatsoever against the Chestnut Street National Bank. No claim was ever made by him against the Receiver. This is admitted by him in his answers to the interrogatories attached to the bill of discovery. (Transcript, page 62.) Therefore there was no claim by Long under section 5236, U. S. Revised Statutes, to be filed against the Receiver of the bank and proved to the

satisfaction of the Comptroller, or adjudicated in a court of competent jurisdiction. If Long had no claim against the assets in the hands of the plaintiff in error, it is evident that the judgment creditor of Long, who only stands in Long's shoes, has no claim against the plaintiff in error which can be either proved to the satisfaction of the Comptroller or adjudicated in a court of competent jurisdiction, and the findings of the State Court of Pennsylvania in favor of the defendant in error, as a judgment creditor of Long, are based simply upon its claim of jurisdiction of the writ of attachment and attachment proceedings against the bank. The attachment proceedings instituted by the defendant in error as judgment creditor of Long are in effect proceedings by Long to the use of the defendant in error (his judgment creditor) against the bank but are not proceedings of adjudication of a claim by Long against the bank. The attachment was not issued at the instance of Long. It was issued without his knowledge and against his will. Long had no claim against the bank, for he had been paid in full by his own admissions of record. It seems clear, then, that this proceeding was within the prohibition of section 5242 aforesaid.

14. Before judgment was entered against the bank and plaintiff in error, while these attachment proceedings were pending, the plaintiff in error had entered his appearance in this cause in the State Court of Pennsylvania, and had suggested of record his appointment as Receiver of the bank, and moved the court to vacate and dismiss the attachment proceedings for the reason that it had not jurisdiction of such proceedings under section 5242. (Transcript, pages 63–66). The State court overrules this motion, sustains its jurisdiction, and gives judgment in the attachment proceedings against the bank upon its answers filed to the interrogatories exhibited to it in the attachment proceedings by the defendant in error, then plaintiff in the State court. (Transcript, pages 66–69.) This, we think, is clearly error.

Respectfully submitted,

ASA W. WATERS,
Of Counsel.

In the Supreme Court of the United States.

[Record No. 17,306.]

George H. Earle, Jr., Receiver of the Chestnut Street National Bank, Plaintiff in Error,

vs.

The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the will of Benjamin Milnes, deceased.

October Term, 1899.

No. 218.

SUPPLEMENTAL BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

The point we desire to urge, in addition to that presented in the original brief, will appear in the supplemental brief filed in No. 219.

The case (No. 218) we are now considering, differs from case No. 219, in the fact that process was served upon the bank shortly before the appointment of the Receiver. The immediate effect of such appointment was to take out of the posession of the bank all its assets, leaving it nothing with which to respond to the judgment entered against it as garnishee in Court of Common Pleas, No. 4, of Philadelphia County, on the twenty-first day of May, 1898, after the appointment of the

Receiver, and after his motion to vacate and dismiss the attachment had been filed in connection with an affidavit setting forth the fact of the insolvency of the bank and of his appointment.

The judgment which the court entered was as follows (Record, page 66):—

> It is adjudged that the above-named garnishee has a deposit in money belonging to the above-named defendant of $2900, with interest from October 28th, 1897; and also that the said garnishee has seventy-seven shares of "National Gas Trust" stock and thirty-three shares of the capital stock of the Eighth National Bank of Philadelphia, belonging to the said defendant, and pledged by him with the said garnishee for payment by him to it of the sum of $17,831, with interest thereon from April 22d, 1897, and that the plaintiff have execution of any dividends on the said deposit of $2900, with interest, in common with the other creditors of said garnishee, less thirty-five dollars, counsel fee for the said garnishee's counsel; and that if the said garnishee refuse or neglect, on demand by the sheriff, to pay the same, then the same to be levied of the said garnishee according to law, as in the case of a judgment against it for its proper debt; and also that the plaintiff have leave to issue a writ of *fieri facias* against the above-named defendant for the sale of the said seventy-seven shares of "National Gas Trust" stock and thirty-three shares of the capital stock of the Eighth National Bank of Philadelphia, pledged by the defendant with the garnishee, subject to the garnishee's claim, under said pledge, of the sum of $17,831, with interest thereon from April 22d, 1897, or so much thereof as shall be necessary to satisfy the plaintiff's judgment against the defendant in this case, with costs.

It will be observed that process was awarded by the court which could only be executed against property which, by the laws of the United States, had passed into the possession of one of its officials. The attaching plaintiff received an award "of "any dividends on the said deposit of $2900, with interest, in "common with the other creditors of said garnishee." It was further adjudged in his favor that in case of failure, on demand, by the sheriff thus to pay, said sum should be "levied of the "said garnishee according to law," and that the plaintiff should issue a writ of *fieri facias* for the sale of the shares of Gas Trust stock and of Eighth National Bank of Philadelphia stock, "pledged by the defendant with the garnishee, subject "to the garnishee's claim under said pledge of the sum of "$17,831, with interest."

The dividends could neither be paid by the bank nor by the Receiver. They could only be paid out of moneys deposited in the Treasury of the United States, upon the order of the Comptroller of the Currency.

The shares of stock pledged with the insolvent bank had passed, before the judgment of the State Court, into the possession of the Receiver, subject to his duty to sell the same at such time and place as in his discretion should be best for realizing values. The process which the court directed to issue upon the judgment it entered against the garnishee, commanded the sheriff to sell these shares of stock. The inevitable result of such a sale would be an interference with the title of shares actually held by the Receiver. He would be confronted with a purchaser who would insist upon his right to receive the shares upon the payment of a sum specified in the decree of the Court of Common Pleas, No. 4, of Philadelphia County, in an action in which the Receiver had not been heard.

It was the right and the duty of the Receiver to sell these shares in accordance with his own discretion. If, after the sale, any balance still remained in his hands, it would be his duty to pay over the same to the Comptroller of the Currency. To the Comptroller alone, the person entitled to receive any remaining proceeds was bound to go for payment. It is impossible, upon the record before the court, to know whether or not the shares remained in the hands of the Receiver, at the date of judgment unsold. If they had been sold, the judgment ordered sale of a title which, under the laws of the United States, had been divested.

The shares of stock in question were in the hands of the Receiver, who was clothed with a right which could not be interfered with by the State court. The latter had no power, as against the Receiver, to determine the amount due upon the pledge, nor the conditions precedent, which would entitle the purchaser of the shares to take the same out of his possession.

The State court had no right to direct that a dividend upon a deposit of $2900 should be paid out of the funds of the

bank, and that the bank should be compelled to collect the amount due to it out of the shares of stock.

In short, by virtue of the judgment which was entered, the Receiver, whose sole duty was to convert the assets in his hands into cash, and to pay over the same into the Treasury of the United States, was interfered with in the discharge thereof.

The State court had made no decree as against the bank prior to the Receiver's appointment. There were no assets, in the form of money or otherwise, in the possession of the bank, payable to the judgment debtor, at the time of its making. They had passed from its possession into that of the Receiver, subject to the duty owing by him, under the statutes of the United States. The State court should have refused to make an order upon or garnishee the bank, holding it liable to pay over to an attaching creditor property which had been taken out of its possession by virtue of a statute of the United States. Its decree could have no effect other than to embarrass the Receiver in the discharge of his official duty. It was made concerning a *rem*, *inter alia*, shares of stock, which were in the possession of the officials of the United States.

JOHN G. JOHNSON,
Of Counsel for Plaintiff in Error.